STATE OF MICHIGAN

COURT OF APPEALS

HASTINGS MUTUAL INSURANCE CO.,

Plaintiff-Appellee/Cross-Appellee,

v

KELLY SCOTT RUNDELL, QUENTIN MERLD RUNDELL, SR., PATRICIA RUNDELL, and QUENTIN MERLD RUNDELL, JR.,

Defendants-Appellants/Cross-Appellants,

and

SHIRLEY GWEN HUNTER and JAMES FLYNN HUNTER,

Defendants-Appellants.

UNPUBLISHED
July 1, 2003

No. 238549
Oakland Circuit Court
LC No. 01-029676-CZ

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition. We affirm.

I. Factual and Procedural History

Defendants Quentin Merld Rundell, Sr. ("Quentin Sr."), and his wife, Patricia Rundell ("Patricia"), had a homeowners' insurance policy with plaintiff. Their son, Kelly Scott Rundell ("Kelly"), lived with them at the time. As a resident relative, Kelly was an insured under the policy. On September 9, 1998, Kelly was seen driving a car in the parking lot of Davisburg Medical Center. He was steering the car with one hand and had his other hand on a shotgun, which was resting on the sill of the car and was pointed out the window of the car. He stopped the car, got out, and walked toward the entrance of Davisburg Medical Center with the shotgun under his jacket. When he was in front of the entrance, defendant Shirley Gwen Hunter ("Shirley") was walking out the front door. Shirley held the door open so that Kelly could grab it and walk through. However, instead of walking through the door, Kelly stopped walking and stood in front of Shirley. Shirley then stepped to get out of Kelly's way. A witness saw Kelly

raise his arm and then heard three shots. Shirley fell to the ground after being shot in the buttock and pretended to be unconscious. Kelly looked at her, kicked her foot, and laughed. He then turned around, walked back to the car, and drove away. Later, doctors told Shirley that she had been shot twice. However, medical records show that she had one entrance wound and one exit wound. Kelly was later apprehended at his home, where police found a sawed-off shotgun. Inside a car parked at the home, police found a pipe-cutter and the barrel of the shotgun that had been cut off. Kelly was evaluated at the Center for Forensic Psychiatry ("Forensic Center") and was diagnosed with schizophrenia.[1]

Shirley and her husband, James Flynn Hunter (collectively, "the Hunter defendants"), filed a lawsuit against Kelly, Quentin Sr., Patricia, Quentin Merld Rundell, Jr. ("Quentin Jr.") (collectively, "the Rundell defendants"), and Davisburg Medical Center, Inc., to recover damages for the shotgun injuries to Shirley (referred to as "the underlying action").[2] Plaintiff later filed the complaint against defendants in the present case, seeking a declaratory judgment that it had no duty to defend or indemnify and had no liability under the insurance policy for the Hunters' claims of injury in the underlying action.[3] On November 28, 2001, the trial court issued an opinion and order granting plaintiff's motion for summary disposition under MCR 2.116(C)(10). The trial court concluded that Shirley's injuries were not covered under the policy because: (1) there was no question of fact that the shooting was not an accident and was therefore not an "occurrence" pursuant to the policy, (2) the policy's intentional acts exclusion to coverage applied because Shirley's injuries were the natural and foreseeable consequences of Kelly's intentional act, (3) Kelly's mental illness did not alter the conclusion that his actions were intentional, and (4) the derivative negligent conduct is excluded from coverage because it derived from an act that was excluded by the policy.

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[1] Kelly was charged with assault with intent to murder, MCL 750.83, three counts of possession of a firearm during the commission of a felony, MCL 750.227b, possession of a short-barreled shotgun/rifle, MCL 750.224b, carrying a concealed weapon, MCL 750.227, felonious assault, MCL 750.82, and resisting and obstructing a police officer, MCL 750.479. The trial court determined that Kelly was incompetent to stand trial and dismissed the charges against him. This Court affirmed. *People v Rundell*, unpublished opinion per curiam of the Court of Appeals, issued 11/20/01 (Docket No. 232459).

[2] The Hunter defendants made the following claims in the underlying action: (1) premises liability against Davisburg Medical Center, Inc., (2) negligent storage and/or disposal of a firearm against Quentin Sr. and Patricia, who lived with Kelly and stored the shotgun he used to shoot Shirley in their home, (3) negligent storage and/or disposal of a firearm against Quentin Jr., who owned the shotgun Kelly used to shoot Shirley, (4) negligent discharge of a firearm against Kelly, (5) battery against Kelly, (6) nuisance against Davisburg Medical Center, Inc., and (7) loss of companionship and society against the Rundell defendants and Davisburg Medical Center, Inc.

[3] Plaintiff had filed a similar complaint against defendants in 2000. However, plaintiff voluntarily dismissed the case without prejudice after the trial court denied its motion for summary disposition and set the case for trial. The trial court denied plaintiff's motion for summary disposition after determining that there were "genuine issues of material fact regarding whether Kelly Rundell acted either intentionally or criminally and whether, in his mental condition, he reasonably expected or actually intended that the injury would result."

II. Analysis

A. Standard of Review

Plaintiff filed its motion for summary disposition pursuant to MCR 2.116(C)(10).

> A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). A motion for summary disposition should be granted when, except in regard to the amount of damages, there is no genuine issue in regard to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Veenstra, supra* at 164. In deciding a motion brought under this subsection, the trial court must consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in a light most favorable to the nonmoving party. *Veenstra, supra* at 164. . . . The decision whether to grant a motion for summary disposition is a question of law that is reviewed de novo. *Id.* at 159. [*Kelly-Stehney & Assoc, Inc v MacDonald's Industrial Products, Inc*, 254 Mich App 608, 611-612; 658 NW2d 494 (2003).]

Similarly, issues involving the proper interpretation and application of an insurance contract are reviewed de novo. *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 528; 620 NW2d 840 (2001). In reviewing an insurance policy, we first look to the language of the policy and interpret its terms in accordance with the principles of contract construction. *Allstate Ins Co v McCarn*, 466 Mich 277, 280; 645 NW2d 20 (2002). An insurance policy must be enforced according to its terms. *Id*. If the terms are not defined by the policy, they are given their commonly used meanings. *Id.* A term is not rendered ambiguous by the fact that the policy does not define the term. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). If the terms of the policy are ambiguous, we construe the policy in favor of the insured. *Id*. However, where the terms of the policy are unambiguous, the policy must be enforced as written. *Id*.

B. The Intentional Acts Exclusion

Defendants argue that the trial court erred in concluding as a matter of law that Kelly's shooting of Shirley was not an accident or "occurrence"[4] and fell within the intentional acts exclusion of the policy. Assuming, without deciding, that defendants are correct that the trial court erred in concluding that the shooting was an "occurrence" as a matter of law, we conclude that the trial court did not err in determining as a matter of law that the intentional acts exclusionary clause in the policy was applicable. The intentional acts exclusionary clause of the policy provides, "Medical payments to others do not apply to 'bodily injury' or 'property

[4] According to the language of the policy, liability coverage for damages arises from an "occurrence." The policy defines an "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions," which results in bodily injury or property damage.

damage' . . . which may reasonably be expected to result from the intentional or criminal acts of an 'insured' or which is in fact intended by an 'insured.' " In *Allstate Ins Co v Judith Miller (After Remand)*, 226 Mich App 574, 581-582; 575 NW2d 11 (1997), this Court analyzed a substantially similar policy exclusion:

> The language "reasonably be expected" is unambiguous and requires that the court apply an objective standard of expectation. [*Allstate Ins Co v*] *Freeman*, [432 Mich 656, 686; 443 NW2d 734 (1989).] By contrast, the language "in fact intended by an insured person" requires that the court apply a subjective standard of expectation. See *id.* Thus, coverage is excluded under the policy when (1) the insured acted either intentionally or criminally and (2) the insured either reasonably expected or actually intended that the particular injury would result from his intentional or criminal conduct. An injury is reasonably expected where it is the natural, foreseeable, expected, and anticipated result of the intentional or criminal conduct. *Id.* at 687-688.

In regard to the first prong of the analysis, defendants argue that there is a question of fact regarding whether the shooting was intentional. In support of this argument, defendants argue that Kelly stated at the Forensic Center that the shooting was an accident and that he did not mean to hurt anyone. However, we can find nothing in the Forensic Center records submitted by defendants supporting this claim. While in the Forensic Center, Kelly gave various accounts of the incident. At times he denied any involvement in the shooting, denied being present at the scene of the shooting, and denied owning a gun. At other times, he admitted owning a gun and admitted being present at a bank near the scene of the shooting. On one occasion, he stated, "I just got back from depositing two checks and I went for a walk, with the shotgun. And I went off and hit Mrs. Hunter. That's about it." Kelly's statement that "I went off" does not support the contention that the gun discharged accidentally. Despite defendants' allegation, there is no evidence that Kelly ever indicated that the shooting was unintentional. Kelly never gave any sworn testimony regarding the shooting and will not testify about the shooting at any trial because the lower court found that Kelly was mentally incompetent to testify at trial. The other evidence submitted includes deposition testimony that one of the witnesses saw Kelly raise his arm and heard the shotgun go off. Shirley was shot in the buttock, fell to the ground, and pretended like she was unconscious. Kelly kicked Shirley's unmoving body, laughed, walked back to his car, and drove away. In light of this evidence, we conclude that there is no question of material fact that Kelly fired the gun intentionally.

Defendants also argue that, even if Kelly did not mistakenly shoot the gun, he did not have the mental capacity to expect or intend that the injury would result from his conduct. Kelly was diagnosed with schizophrenia. The criminal charges filed against Kelly were dismissed because he was found incompetent to stand trial. However, Kelly's mental illness is not relevant to whether the shooting was an intentional act under the policy. It is significant that the facts surrounding the insured's role in the shooting are viewed from an objective perspective. "[W]hile an insane or mentally ill insured may be unable to form the criminal intent necessary to be charged with murder, such an individual can still intend or expect the results of the injuries he causes." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 563; 489 NW2d 431 (1992). "[W]hen the evidence unequivocally shows that the insured intended his or her actions, the existence of mental illness does not alter that conclusion." *Dale Miller v Farm Bureau Mut Ins*

Co, 218 Mich App 221, 234; 553 NW2d 371 (1996). "[T]he law in Michigan is clear: Evidence that an insured suffers from mental illness, standing alone, does not create a genuine issue of material fact regarding whether the insured intended his actions or the consequences of his actions." *Id.* at 231. It is improper for a court to determine that, because there is evidence of the insured's mental incapacity, a factual question exists in regard to whether the insured acted intentionally. *Judith Miller, supra* at 582.

We conclude that Shirley's injury was a natural, foreseeable, expected, and anticipated result of Kelly's conduct. A person who fires a sawed-off shotgun from close range toward a person at the entrance of a public building may reasonably expect that it is highly likely that injury or death will result from such actions. The fact that Kelly was mentally ill at the time of the shooting does not alter the conclusion that he intended to shoot the gun and that a reasonable person could expect that injury would result from the shooting. Therefore, the trial court did not err in determining that the intentional act exclusion applies in this case.

C. Schizophrenia as a Physical Disability

Defendant Kelly argues that the trial court erred in failing to hold that he was physically disabled due to his schizophrenia. However, the trial court in fact entered an order declaring that Kelly "lacks sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably in a civil deposition or civil trial . . . ." In support of this argument, Kelly argues that "[t]he 400 year[-]old archaic common law rule that the insane person is strictly liable for his torts and must perform to the level of an ordinary reasonable person must be reversed." Kelly goes into an in-depth analysis of the nature of schizophrenia and quotes several cases that describe expert's testimony regarding mental illness, but does not explain how his arguments relate to the present case or why the trial court erred in granting summary disposition. "Insufficiently briefed issues are deemed abandoned on appeal." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). Therefore, Kelly has not properly presented this issue for appeal.

D. Constitutional Arguments

Kelly also argues that requiring him "to perform to the level of the ordinary reasonable man" violates the Equal Protection Clauses of the United States and Michigan Constitutions, US Const, Am XIV; Const 1963, art 1, §2, the Due Process Clauses of the United States and Michigan Constitutions, US Const, Am XIV; Const 1963, art 1, §17, and the cruel and unusual punishment clauses of the United States and Michigan Constitutions, US Const, Am VIII; Const 1963, art 1, §16. Kelly argues that requiring him to perform at the level of an ordinary person "is requiring an impossibility and is an uncivilized law." Kelly then presents several public policy reasons why mentally ill people like himself should not be required to perform at the level of an ordinary person. Kelly also argues that SJI 13.03 regarding mental illness "is uncivilized and violates the equal protection, due process, and cruel and inhuman punishment provisions of the Michigan and United States Constitutions" and "must be reversed."

Kelly does not expand on his arguments or give any valid legal support for his arguments. The only cases Kelly cites merely stand for general principles of law.[5] " 'A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim.' " *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001), quoting *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 537; 593 NW2d 190 (1999). "[T]his Court need not address an issue that is given only cursory consideration by a party on appeal." *Eldred, supra* at 150. Because this issue was not properly presented for appeal, we decline to address this issue.[6]

III. Conclusion

We conclude that there is no question of material fact that Kelly's act of shooting the shotgun was an intentional act that caused an injury that could reasonably be expected to result from his act. Therefore, the trial court did not err in determining that the intentional acts exclusion to the policy applies and that plaintiff is relieved of its obligation to indemnify or defend against the insureds. Accordingly, the trial court did not err in granting plaintiff's motion for summary disposition.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra

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[5] Kelly cites *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 716; 575 NW2d 68 (1997) for the proposition that "[b]oth the federal and state constitutions provide that no person will de denied the equal protection of the law." He also cites *Lake Michigan College Federation of Teachers v Lake Michigan Community College*, 518 F2d 1091, 1094 (1975), cert den 427 US 904; 96 S Ct 3189; 49 L Ed 2d 1197 (1976), for the proposition that "[t]he safeguards of procedural due process apply only when a person is deprived of liberty or property . . . ." Finally, he cites *Cooperative Fire Ins Ass'n v Combs*, 648 A2d 857, 860 (Vt, 1994), where the Vermont Supreme Court joined the jurisdictions that had held "that as a matter of law an insane person is to be considered incapable of forming an intent to cause injury."

[6] Furthermore, we note that in regard to this issue, the Supreme Court did not flatly hold that mentally ill people are held to the standard of an ordinary person in all situations. In *Churchman, supra* at 563, the Supreme Court held that "while an insane or mentally ill insured may be unable to form the criminal intent necessary to be charged with murder, such an individual can still intend or expect the results of the injuries he causes." "A decision of the Supreme Court is binding upon this Court until the Supreme Court overrules itself . . . ." *O'Dess v Grand Trunk Western Railroad Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996).